

ESTTA Tracking number: **ESTTA541108**

Filing date: **05/31/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding | 91206251 |
| Party | Plaintiff Elevation Management, LLC |
| Correspondence Address | ROCHELLE D ALPERT MORGAN LEWIS & BOCKIUS LLP ONE MARKET, SPEAR STREET TOWER SAN FRANCISCO, CA 94105 UNITED STATES ralpert@morganlewis.com, sftrademarks@morganlewis.com, jrubel@morganlewis.com, shall@morganlewis.com, ylolua@morganlewis.com |
| Submission | Other Motions/Papers |
| Filer's Name | Rochelle D. Alpert |
| Filer's e-mail | ralpert@morganlewis.com, shall@morganlewis.com, sftrademarks@morganlewis.com, ylolua@morganlewis.com |
| Signature | /RDA/ |
| Date | 05/31/2013 |
| Attachments | Decl. of R. ALPERT iso Opposition to App's Motion to Exend Time (Exs A-C) - Pages 1-25.pdf(821732 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 85/171,899
Filed November 8, 2010
For the mark **THE ELEVATION GROUP**
Published in the OFFICIAL GAZETTE on APRIL 3, 2012

ELEVATION MANAGEMENT, LLC,

Opposer,

v.

FINISH STRONG VENTURES, INC.,

Applicant.

Opposition No.: 91,206,251

**DECLARATION OF ROCHELLE D. ALPERT IN SUPPORT OF
OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

I, Rochelle D. Alpert, declare as follows:

1. I am a partner with the law firm Morgan, Lewis & Bockius LLP and am counsel of record for Opposer, Elevation Management, LLC ("Elevation" or "Opposer"), in the above-captioned opposition proceeding before the Trademark Trial and Appeal Board. I have personal knowledge of the facts set forth in this declaration and could testify thereto if called upon as a witness.

2. Attached hereto as Exhibit A is a true and correct copy of Applicant's Initial Disclosures, served by mail on Opposer on March 29, 2013, although due on November 12, 2012, after Applicant's counsel requested an extension of time. Applicant's counsel never requested an extension beyond November 12, 2012 for service of Initial Disclosures.

3. Attached as Exhibit B is a true and correct copy of all of Applicant's discovery requests in this proceeding, comprised of Applicant's First Set of Interrogatories and Requests for Production of Documents and Things, served by mail on Opposer on March 29, 2013. The discovery was served concurrently with Applicant's Initial Disclosures.

4. Elevation timely served its Initial Disclosures on November 12, 2012.

5. On April 26, 2013, I received a voicemail from Applicant's counsel, Robert Golden, requesting that we agree to suspend the time for responding to discovery because of the Motion for Summary Judgment. Before I could respond, the Board issued its suspension of this proceeding except as to Elevation's Motion for Summary Judgment.

6. Attached hereto as Exhibit C is a true and correct copy of email correspondence between myself and counsel for Applicant, Robert Golden, where Mr. Golden requested consent for a three (3) week extension for Applicant to file a response to Elevation's Motion for Summary Judgment. I consented to a one (1) week extension.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 31, 2013


Rochelle D. Alpert

EXHIBIT A

**DECLARATION OF ROCHELLE D. ALPERT IN SUPPORT OF
OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Elevation Management, LLC v. Finish Strong Ventures, Inc.

Opposition No.: 91,206,251

Submitted by: Elevation Management, LLC (Opposer)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial No.: 85171899
Mark: THE ELEVATION GROUP
International Class: 41
Applicant: Finish Strong Ventures, Inc.
Published in *Official Gazette*: April 3, 2012

| | | |
|-------------------------------|---|-------------------------|
| ----- | X | |
| ELEVATION MANAGEMENT, LLC, | : | |
| | : | |
| Opposer, | : | |
| | : | |
| | : | Opposition No. 91206251 |
| | : | |
| FINISH STRONG VENTURES, INC., | : | |
| | : | |
| Applicant. | : | |
| ----- | X | |

**APPLICANT'S INITIAL DISCLOSURES PURSUANT TO
37 C.F.R. § 2.120(a) AND FED. R. CIV. P. RULE 26(a)**

Applicant Finish Strong Ventures, Inc. ("Applicant"), for its initial disclosures pursuant to 37 C.F.R. § 2.120(a) and Fed. R. Civ. P. 26(a)(1), states as follows:

- 1. The name and address of each individual likely to have discoverable information relevant to the disputed facts is:**

Mr. Mike Dillard – Founder / President
Finish Strong Ventures, Inc.
300 West Sixth Street, Suite 2200
Austin, TX 78701

Mr. Robert Hirsch
Finish Strong Ventures, Inc.
300 West Sixth Street, Suite 2200
Austin, TX 78701

An investigation into additional individuals and/or entities possessing discoverable information is being undertaken and is ongoing.

2. A description, by category and location, of all documents, data compilations and tangible things that are in the possession, custody or control of Applicant and that Applicant may use to support its claims.

Applicant anticipates that the following categories of documents and things might be used to support its claims:


- service mark registrations, applications, and related documents;
- sales and other financial information;
- advertising/public relations materials and information;
- marketing materials and information;
- service mark information, non-downloadable videos and books displaying the service mark;
- distribution information;
- retailer information;
- consumer information;
- enforcement materials and information.

An investigation into additional documentation is ongoing. All correspondence, business records, and other tangible things relevant to the matters at issue are located at the offices of Applicant, and/or at the offices of its attorney of record.

Dated: Scarsdale, New York
March 29, 2013

Respectfully submitted,

LACKENBACH SIEGEL LLP



Robert B. Golden
Lackebach Siegel Building
One Chase Road
Scarsdale, New York 10583
(914) 723-4300
(914) 723-4301 fax
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the enclosed APPLICANT'S INITIAL DISCLOSURES PURSUANT TO 37 C.F.R. § 2.120(a) AND FED. R. CIV. P. RULE 26(a) was served on Opposer on March 29, 2013, via U.S. 1st Class Mail, addressed to counsel for Opposer as follows:

Rochelle D. Alpert, Esq.
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105

Jordana S. Rubel, Esq.
Mogan, Lewis & Bockius LP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Dated: Scarsdale, New York
March 22, 2013



Nicole Saraco

EXHIBIT B

**DECLARATION OF ROCHELLE D. ALPERT IN SUPPORT OF
OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Elevation Management, LLC v. Finish Strong Ventures, Inc.

Opposition No.: 91,206,251

Submitted by: Elevation Management, LLC (Opposer)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial No.: 85171899
Mark: THE ELEVATION GROUP
International Class: 41
Applicant: Finish Strong Ventures, Inc.
Published in *Official Gazette*: April 3, 2012

| | | |
|-------------------------------|---|-------------------------|
| ----- | X | |
| ELEVATION MANAGEMENT, LLC, | : | |
| | : | |
| Opposer, | : | |
| | : | |
| | : | Opposition No. 91206251 |
| | : | |
| FINISH STRONG VENTURES, INC., | : | |
| | : | |
| Applicant. | : | |
| ----- | X | |

**APPLICANT'S FIRST SET OF INTERROGATORIES and
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to the provisions of § 2.120 of Title 37 of the Code of Federal Regulations, Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, and the following instructions and definitions, Applicant, Finish Strong Ventures, Inc. ("Applicant"), hereby requests that Opposer, Kio Inagaki ("Opposer"), answer the following Interrogatories and Requests for Admission in writing and under oath, and produce for inspection and copying, at the offices of Lackenbach Siegel LLP, One Chase Road, Scarsdale, New York, 10583, all documents responsive to the following requests, within thirty (30) days of the date of service hereof.

INSTRUCTIONS

1. In the event that you object to any of the interrogatories or requests contained herein below, state the basis or reason for the objection, and answer any remaining part or subpart of the interrogatory or request that is otherwise unobjectionable.

2. If the attorney-client privilege, the attorney work-product doctrine or any other privilege is asserted in response to any interrogatory or request contained herein below, state the specific privilege asserted, the basis therefore, and identify the specific document(s) or communication(s) over which the privilege is being asserted.

3. The following interrogatories and requests require responses that are accurate and complete as of the date on which they are made, and to the extent provided by Rule 26 of the Federal Rules of Civil Procedure, the interrogatories and requests are continuing in nature.

DEFINITIONS

As used herein, the following definitions shall apply:

1. “Document” is used in its broadest sense, consistent with the terms and intentions of Rule 34(a) of the Federal Rules of Civil Procedure. Any drafts or preliminary versions of a document or any document or copy of a document bearing any notations, comments or markings not found on or in the original, shall be considered a separate document.

2. “Communication” means any exchange of information by any means.

3. “Thing” means any tangible object, including, without limitation, goods upon which the Mark (as this term is defined herein below) was, is, or will be used, prototypes, samples, displays, labels, hangtags, cards, advertisements, letterhead, stationery, inserts, packaging, wrappers, receptacles or containers, business cards and/or forms.

4. “Identify” or “state the identity of,” with respect to a person, means to state:

- a. the person’s full name;
- b. their present or last known address; and
- c. their current employer or business affiliation and/or their employer or business affiliation at the time(s) relevant to the interrogatories.

5. “Identify” or “state the identity of,” with respect to a corporation or other business entity, means to state:

- a. the full name of such entity;
- b. the address of such entity;
- c. the form or organization of such entity; and
- d. the principal business or activity of such entity.

6. “Identify” or “state the identity of,” with respect to a document, regardless of whether any claim of privilege is asserted, means to state:

- a. the identity of the person(s) who prepared it, the sender(s) and recipient(s), if any;
- b. the title or a description of the general nature of the document;
- c. the date of preparation; and
- d. the date and manner of distribution and publication, if any.

7. “Opposer’s Mark” means ELEVATION PARTNERS, as used by or on behalf of Opposer as a name, trade name, trademark, and/or service mark, whether used alone or in connection or combination with any other name, word, logo, design, symbol, trade dress or mark, and regardless of the punctuation, capitalization and/or stylization.

8. “Opposer’s Services” mean any service in which Opposer may, will, or has used in conjunction with Opposer’s Mark.

9. “Opposer,” “Plaintiff,” “You,” and/or “Your” means Elevation Management, LLC, and any and all current or former licensees, distributors, users, owners or assignees of the Mark, as well as the present and former officers, directors, partners, subsidiaries, employees,

attorneys, agents and representatives, and any predecessor, successor, parent, division or subsidiary entity, either domestic or foreign, of Opposer.

10. "Applicant" "Defendant," "Us" and/or "Our" means Finish Strong Ventures, Inc.

11. "Application" means Application Serial No. 85171899 for the mark THE ELEVATION GROUP, for "Online educational services, namely, providing web seminars, temporary use of non-downloadable videos and books, live events, namely, seminars and conferences, and on-line journals, namely, blogs all in the field of financial strategies and techniques employed by highly successful wealth administrators, entrepreneurs, and asset managers in the areas of taxation, investment, personal finance management, charitable giving, and business growth," ("Applicant's Services") filed on November 8, 2010.

INTERROGATORIES

Interrogatory No. 1

Identify all persons currently or previously employed by or otherwise associated with Opposer who have or may have knowledge of any matter relevant to this proceeding, identify the dates and nature of such employment or association, and set forth the nature of the knowledge had by each such individual.

Interrogatory No. 2

In connection with Opposer's use of Opposer's Mark in United States' commerce or commerce otherwise regulated by Congress, state or identify:

- a. all of Opposer's Services (individually and not by International Class or other category or grouping) upon which Opposer's Mark has been used;
- b. for each of Opposer's Services, the date of first use of each service;

- c. Opposer's customers for each of the services, including each customer's geographic location(s);
- d. the total volume, in units, per year, of each of the services sold by Opposer;
- e. the total volume, in dollars, per year, of each of services sold by Opposer; and
- f. the per unit selling price of Opposer's each of services.

Interrogatory No. 3

With respect to each individual service, identify any period during which Opposer's Mark was not in consistent or continuous use by Opposer, and in connection with any such period, identify the dates of non-use.

Interrogatory No. 4

State whether Opposer has advertised or otherwise promoted the Opposer's Mark and/or the Opposer's Services in the United States and, if the answer is in the affirmative, set forth and/or identify, for each of the services individually:

- a. each such advertisement or promotion;
- b. the date of each such advertisement or promotion;
- c. the nature of each such advertisement or promotion (e.g., print, radio, catalog, Internet);
- d. where each such advertisement or promotion appeared; and
- e. the total dollar amount expended by Opposer, per year, in connection with such advertisements or promotions.

Interrogatory No. 5

Describe the marketing methods and channels of distribution used by Opposer in connection with Opposer's Services.

Interrogatory No. 6

Describe the characteristics of purchasers of Opposer's Services and the degree of care they exercise in making purchasing decisions involving Opposer's Services.

Interrogatory No. 7

Describe, in detail, all third party uses, intended uses, or trademark applications or registrations, of which Opposer is aware, if any, of the trademark THE ELEVATION GROUP, or any design or composite mark including THE ELEVATION GROUP, or any other mark which Opposer determined is confusingly similar to Opposer's Mark.

Interrogatory No. 8

State whether Opposer has experienced any episodes of confusion as between Opposer and Applicant, or between Opposer's Mark and Applicant's THE ELEVATION GROUP mark as applied for in the Application, and if the answer is in the affirmative, for each such episode, state or identify:

- a. the nature of the confusion (e.g., misdirected mail or telephone calls);
- b. the date the episode of confusion occurred;
- c. the party who was confused (e.g., who mailed the misdirected mail or who placed the misdirected call);
- d. the party on behalf of Opposer who witnessed the confusion (e.g., the party who received the misdirected mail or telephone call); and
- e. all documents which evidence such confusion.

Interrogatory No. 9

Identify all agreements of any kind, whether oral or written, including, without limitation, settlement agreements, coexistence agreements, agreements not to use, concurrent use

agreements, and letters of consent (to use or register), to which Opposer is a party, in any way relating to (i) Opposer's Mark, and/or (ii) any use, intended or proposed use, application, and/or registration of the service mark THE ELEVATION GROUP, any design or composite mark including THE ELEVATION GROUP, and/or any mark Opposer determined to be confusingly similar to Opposer's Mark, by any person or entity other than Opposer.

Interrogatory No. 10

Identify all of Opposer's efforts to enforce or protect Opposer's Mark against any other mark which Opposer determined was confusingly similar to Opposer's Mark, including, without limitation, all cease and desist correspondence, all opposition and cancellation proceedings, all arbitrations or mediations, and all federal or state court litigation, and for each such enforcement effort the identification should include:

- a. the marks involved;
- b. the parties involved;
- c. the nature of the enforcement efforts, i.e., letter, opposition or litigation; and
- d. the outcome of the enforcement efforts.

Interrogatory No. 11

Identify all experts with whom Opposer has consulted or intends to consult regarding Opposer's and/or this proceeding or upon whose testimony Opposer will or may rely in this proceeding.

Interrogatory No. 12

Identify all witnesses from whom Opposer will or may take testimony in connection with this proceeding.

Interrogatory No. 13

Identify all persons who participated in the selection and adoption of Opposer's Mark.

Interrogatory No. 14

Identify all persons involved in the preparation of answers to the aforementioned interrogatories and identify the answers or responses to which they contributed and the information provided.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Request for Production No. 1

All documents and things evidencing Opposer's first use of Opposer's on each of Opposer's Services (individually and not by International Class or other category or grouping).

Request for Production No. 2

All documents and things evidencing all services upon which Opposer has used Opposer's Mark, including without limitation, catalogs, price sheets, website pages, and the like.

Request for Production No. 3

All documents and things evidencing all other goods, if any, upon which Opposer has the bone fide intention to use Opposer's Mark.

Request for Production No. 4

All documents and things evidencing Opposer's sales, in dollars, of Goods (individually and not by International Class or other category or grouping), including, without limitation, invoices, purchase orders, shipping documents, export documents, and customs documents.

Request for Production No. 5

All documents and things evidencing Opposer's sales, in units, of Opposer's Services (individually and not by International Class or other category or grouping), including, without limitation, invoices, purchase orders, shipping documents, export documents, and customs documents.

Request for Production No. 6

All documents and things referring or relating to Opposer's customers for Opposer's Services (individually and not by International Class or other category or grouping), including without limitation, customer lists, marketing proposals, marketing presentations, and the like.

Request for Production No. 7

All documents and things evidencing or relating to Opposer's advertising or promotion of Opposer's Services, including, without limitation, a copy of each such advertisement or promotion, all documents which evidence the location and date of such advertising, all documents which evidence the dollar amount spent on such advertising, correspondence with advertising or marketing agencies or personnel, and all documents evidencing or relating to the effectiveness or intended effectiveness of the advertisements or promotion, including demographic targets, and intended and actual "impressions."

Request for Production No. 8

All documents referring or relating to consumers/ purchasers of Opposer's Services (individually and not by International Class or other category or grouping), including, without limitation, all studies or reports pertaining to the actual, perceived or desired demographics of consumers/purchasers of Opposer's Services.

Request for Production No. 9

All documents referring or relating to Applicant and/or Applicant's use of THE ELEVATION GROUP mark, or any similar mark or marks, including, without limitation, all communications by or on behalf of Opposer relating to Applicant's use, intended use, and/or application to register THE ELEVATION GROUP.

Request for Production No. 10

All documents and things evidencing or relating to all third party uses, intended uses, applications and/or registrations, of which Opposer is aware, if any, of the trademark THE ELEVATION GROUP, and/or any mark Opposer determined to be confusingly similar to Opposer's Mark.

Request for Production No. 11

All documents and things evidencing or relating to any episodes of confusion as between Opposer and Applicant, or between Opposer's Mark and Applicant's THE ELEVATION GROUP mark as applied for in the Application, including without limitation, documents evidencing the nature of the confusion (e.g., misdirected mail or telephone calls), the date the episode of confusion occurred, the party who was confused (e.g., who mailed the misdirected mail or who placed the misdirected call), and the party on behalf of Opposer who witnessed the confusion (e.g., the party who received the misdirected mail or telephone call).

Request for Production No. 12

All documents and things comprising, evidencing or relating to all agreements of any kind to which Opposer is a party, whether oral or written, including, without limitation, settlement agreements, coexistence agreements, concurrent use agreements, and letters of consent (to use and/or register), relating to or concerning any use, intended or proposed use,

application, and/or registration of Opposer's Mark, and/or any mark Opposer determined was sufficiently similar (whether confusingly similar or not) to Opposer's Mark to warrant such an agreement.

Request for Production No. 13

All documents and things comprising, evidencing or relating to all of Opposer's efforts to enforce or protect Opposer's Mark against the use, intended use, application and/or registration of any other mark which Opposer determined was confusingly similar to Opposer's Mark, including, without limitation, cease and desist correspondence, opposition and cancellation proceedings, arbitrations or mediations, Federal or State court litigation, settlement agreements, coexistence agreements, concurrent use agreements, letters of consent (to use and/or register), and/or licenses, and all documents evidencing or relating to the resolution or outcome of such efforts.

Request for Production No. 14

All documents and things evidencing or relating to any and all of Opposer's licensees or other permitted users of Opposer's Mark.

Request for Production No. 15

All documents and things evidencing or relating to the quality of Opposer's Services.

Request for Production No. 16

The resume and/or *curriculum vitae* of any expert(s) with whom Opposer has conferred with or intends to call as a witness in this matter and all documents reviewed or received by such expert(s) or prepared by such expert(s).

Request for Production No. 17

Samples or screenshots of each document or thing, including, without limitation, websites and other electronic advertisements or the like, upon which Opposer has ever placed Opposer's Mark.

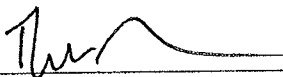
Request for Production No. 18

All documents or things identified in response to Opposer's Interrogatories which have not been otherwise produced.

Dated: Scarsdale, New York
March 29, 2013

Respectfully submitted,

LACKENBACH SIEGEL LLP



Robert B. Golden
Lackebach Siegel Building
One Chase Road
Scarsdale, New York 10583
(914) 723-4300
(914) 723-4301 fax
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the enclosed APPLICANT'S FIRST SET OF INTERROGATORIES and REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS was served on Opposer on March 29, 2013, via U.S. 1st Class Mail, addressed to counsel for Opposer as follows:

Rochelle D. Alpert, Esq.
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105

Jordana S. Rubel, Esq.
Mogan, Lewis & Bockius LP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Dated: Scarsdale, New York
March 29, 2013



Nicole Saraco

EXHIBIT C

**DECLARATION OF ROCHELLE D. ALPERT IN SUPPORT OF
OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Elevation Management, LLC v. Finish Strong Ventures, Inc.

Opposition No.: 91,206,251

Submitted by: Elevation Management, LLC (Opposer)

Alpert, Rochelle D.

From: Alpert, Rochelle D.
Sent: Thursday, May 23, 2013 7:37 AM
To: 'Robert Golden'
Subject: RE: Elevation Management v. Finish Strong

We continue to believe a one week suspension should be enough to accommodate the issues you raised given the nature of the motion.

Rochelle D. Alpert

Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower | San Francisco, CA 94105-1126
Direct: 415.442.1326 | Main: 415.442.1000 | Fax: 415.442.1001
www.morganlewis.com
Assistant: Yelena Lolua | 415.442.1474 | ylolua@morganlewis.com

From: Robert Golden [<mailto:RGolden@LSLLP.com>]
Sent: Thursday, May 23, 2013 6:52 AM
To: Robert Golden; Alpert, Rochelle D.
Subject: RE: Elevation Management v. Finish Strong

Rochelle:

I apologize if you responded and I missed it, but we have been having internet / email issues the last two days.

Will you consent to the 3 week extension or is your final position 1 week?

Rob

From: Robert Golden
Sent: Tuesday, May 21, 2013 4:57 PM
To: 'Alpert, Rochelle D.'
Subject: RE: Elevation Management v. Finish Strong

Rochelle:

Thanks for the quick reply. Finish Strong just hired new in-house counsel, who is now overseeing all legal matters, including this opposition. I am giving him a crash course in trademark law generally, as well as getting him up to speed on the facts and merits of this case, including an assessments of the likelihood of defeating the motion and the likelihood of succeeding on the merits of the case as a whole. Thus, I have not yet received instructions as to whether or not to file an opposition. Assuming the decision to oppose is made, I must then work with counsel to obtain the requisite evidence, which had not yet been collected.

We will agree to accommodate whatever extension of time you may require. Please let me know when you can so I have time to prepare a motion for an extension if need be.

Rob

From: Alpert, Rochelle D. [<mailto:ralpert@morganlewis.com>]
Sent: Tuesday, May 21, 2013 4:44 PM

To: Robert Golden
Subject: RE: Elevation Management v. Finish Strong

Rob

This is not a complicated motion for summary judgment. You will have had 35 days to respond. We are willing to consent to a one(1) week suspension to accommodate your need but we do not understand the need for a three week extension. We of course will expect a similar courtesy from you if needed.

Rochelle Alpert

Rochelle D. Alpert
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower | San Francisco, CA 94105-1126
Direct: 415.442.1326 | Main: 415.442.1000 | Fax: 415.442.1001
www.morganlewis.com
Assistant: Yelena Lolua | 415.442.1474 | ylolua@morganlewis.com

From: Robert Golden [<mailto:RGolden@LSLLP.com>]
Sent: Tuesday, May 21, 2013 9:50 AM
To: Alpert, Rochelle D.
Subject: RE: Elevation Management v. Finish Strong

Lackebach
INTELLECTUAL PROPERTY ATTORNEYS SINCE 1923 **Siegel, LLP**

Rochelle:

We are writing to request and extension of time, of 21 days, to oppose Opposer's motion for summary judgment. Please let me have Opposer's position, or any questions regarding our request, at your earliest convenience.

Thanks,

Rob

Robert B. Golden
Lackebach Siegel LLP
One Chase Road
Scarsdale, New York 10583
(914) 723-4394
(914) 723-4301 (fax)
rgolden@LSLLP.com <<mailto:rgolden@lsllp.com>>

DISCLAIMER

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential and/or it may include attorney work product.

If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.

CERTIFICATE OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is One Market, Spear Street Tower, **San Francisco**, CA 94105.

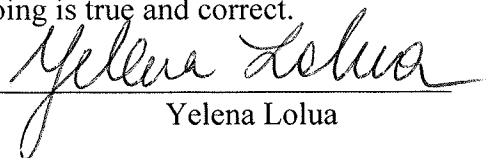
On **May 31, 2013**, I served the within documents:

**DECLARATION OF ROCHELLE D. ALPERT IN SUPPORT OF OPPOSITION
TO APPLICANT'S MOTION FOR EXTENSION OF TIME TO FILE
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT
(EXHIBITS A-C)**

- ☒ **(BY MAIL)** I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP, **San Francisco**, California. I am readily familiar with the firm's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.
- ☐ **(BY OVERNIGHT DELIVERY)** I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Morgan, Lewis & Bockius LLP, **San Francisco**, California. I am readily familiar with the firm's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.
- ☐ **(BY EMAIL)** by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below.

**Robert B. Golden
Lackebach Siegel LLP
Lackebach Siegel Building, One Chase Road
Scarsdale, NY 10583-4165**

Executed on **May 31, 2013**, at **San Francisco**, California. I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.


Yelena Lolua